No. 1035

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	18
Summary of argument	20
Argument	24
I. The defendants by conspiring to acquire control over the principal companies operating taxicabs in certain leading cities, for the purpose and with the effect of causing these companies to purchase their taxicabs exclusively from a defendant manufacturer, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	26
II. The defendants by conspiring to acquire control over the principal companies providing cab service in Chicago, for the purpose and with the effect of preventing competition between such companies for the business of transporting passengers between railroad stations in Chicago, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	41
III. The defendants, by conspiring to exclude others from engaging in taxicab transportation of interstate travelers to and from Chicago railroad stations, have engaged in a conspiracy in illegal restraint and illegal monopolization of interstate commerce	47
Conclusion	61

CITATIONS

Cases:	
Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211	22, 44
American Tobacco Co. v. *United States*, 328 U. S. 781	23, 48
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	52
Appalachian Coals, Inc. v. *United States*, 288 U. S. 344	41
Associated Press v. *United States*, 326 U. S. 1	27, 41
Bacon v. *Illinois*, 227 U. S. 504	61
Baltimore & Ohio S. W. R. R. Co. v. *Settle*, 260 U. S. 166	54, 55, 56
Bigelow v. *RKO Radio Pictures*, 327 U. S. 251	34
Binderup v. *Pathe Exchange*, 263 U. S. 291	29, 60

740203—47 —1

Cases—Continued

	Page
Black & White Taxicab & Transfer Co. v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518	38
Borden's Farm Products Co., Inc. v. *Baldwin*, 293 U. S. 194	46
Champlain Co. v. *Town of Brattleboro*, 260 U. S. 366	56
Dallum v. *Farmers' Co-op Trucking Ass'n*, 46 F. Supp. 785	60
Daniel Ball, The, 10 Wall. 557	42, 56
Delaware L. & W. R. R. v. *Morristown*, 276 U. S. 182	54
Donovan v. *Pennsylvania Co.*, 199 U. S. 279	43
Eastern States Lumber Dealers' Assn. v. *United States*, 234 U. S. 600	27, 35, 40
Fashion Originators' Guild, Inc. v. *Federal Trade Commission*, 312 U. S. 457	28, 35, 40
Georgia v. *Pennsylvania R. R. Co.*, 324 U. S. 439	50
Greater New York Live Poultry C. of C. v. *United States*, 47 F. 2d 156, certiorari denied, 283 U. S. 837	53
Hughes Bros. Co. v. *Minnesota*, 272 U. S. 469	56
Illinois Central R. R. Co. v. *Louisiana R. R. Comm.*, 236 U. S. 157	54
Indiana Farmer's Guide Publishing Co. v. *Prairie Farmer Publishing Co.*, 293 U. S. 268	31, 32
Joseph v. *Carter & Weekes Stevedoring Co.*, Nos. 29 and 30, this Term	59
Kach v. *Monessen Southwestern Ry. Co.*, 151 F. 2d 400	60
Louisiana R. R. Commission v. *Texas & Pacific Ry. Co.*, 229 U. S. 336	55
Lowry v. *Tile, Mantel and Grate Assn.*, 106 Fed. 38	38
Minnesota v. *Blasius*, 290 U. S. 1	61
Montague & Co. v. *Lowry*, 193 U. S. 38	27, 29, 38, 40, 53
National Biscuit Co. v. *Federal Trade Commission*, 299 Fed. 733	32
National Labor Relations Board v. *Baltimore Transit Co.*, 140 F. 2d 51, certiorari denied, 321 U. S. 795	59
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	61
Northern Securities Co. v. *United States*, 193 U. S. 197	41, 43
Parker v. *Brown*, 317 U. S. 341	19, 51
Pennsylvania R. R. Co. v. *Knight*, 192 U. S. 21	24, 60, 61
Spokane United Railways, In the Matter of, 60 N. L. R. B. 14	60
Stafford v. *Wallace*, 258 U. S. 495	53, 61
Standard Sanitary Mfg. Co. v. *United States*, 226 U. S. 20	27
Swift & Co. v. *United States*, 196 U. S. 375	25, 53
United States v. *Bausch & Lamb Co.*, 321 U. S. 707	28
United States v. *Capital Transit Co.*, 325 U. S. 357	24, 56, 57
United States v. *Crescent Amusement Co.*, 323 U. S. 173	28, 29, 32, 33, 41, 46
United States v. *Frankfort Distilleries*, 324 U. S. 293	52

Cases—Continued Page

United States v. *General Motors Corp.*, 121 F. (2d) 376, certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 710 ... 40

United States v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 ... 33

United States v. *New York Central R. R. Co.*, 272 U. S. 457 ... 52

United States v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 ... 39

United States v. *Pullman Co.*, 50 F. Supp. 123 ... 40

United States v. *Reading Co.*, 253 U. S. 26 ... 28

United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150 ... 32, 37

United States v. *South-Eastern Underwriters*, 322 U. S. 533 ... 24, 52, 61

United States v. *Southern Pacific Co.*, 259 U. S. 214 ... 43

United States v. *Swift & Co.*, 122 Fed. 529 ... 25

United States v. *Trenton Potteries Co.*, 273 U. S. 392 ... 32

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61 ... 43

United States v. *United Shoe Machinery Co.*, 247 U. S. 32 ... 45

United States v. *United States Steel Corp.*, 251 U. S. 417 ... 38

United States v. *Winslow*, 227 U. S. 202 ... 38

Waiting v. *Jacksonville Paper Co.*, 317 U. S. 564 ... 54

William Goldman Theatres v. *Loew's, Inc.*, 150 F. 2d 738 ... 33, 34

Williams v. *Jacksonville Terminal Co.*, 315 U. S. 386 ... 59

Wootten v. *Wootten*, 151 F. 2d 147 ... 30

Yellow Cab Co. v. *City of Chicago*, 71 N. E. 2d 652 ... 15

Statutes:

Clayton Act, Sec. 3 (15 U. S. C. 14) ... 21

Sherman Act of July 2, 1890, 26 Stat. 209:

Sec. 1, as amended (15 U. S. C. 1) ... 3, 21

Sec. 2 (15 U. S. C. 2) ... 3, 20, 21, 31, 32

Miscellaneous:

Federal Rules of Civil Procedure, Rule 12 (b) ... 4

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the Northern District of Illinois (R. 21–27) is reported in 69 F. Supp. 170.

JURISDICTION

The judgment of the district court dismissing the complaint was entered on December 2, 1946 (R. 27). Petition for appeal was filed and allowed on January 27, 1947 (R. 28, 30). The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823,

15 U. S. C. 29, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345. Probable jurisdiction was noted on March 17, 1947 (R. 34).

QUESTIONS PRESENTED

1. Whether a conspiracy to acquire control over the principal companies operating taxicabs in certain leading cities and to cause these companies to purchase taxicabs exclusively from a defendant manufacturer illegally restrains and monopolizes interstate commerce.

2. Whether a conspiracy to acquire control over substantially all companies providing cab service in Chicago and to prevent them from competing for contracts with railroads to transport passengers between railroad stations in Chicago illegally restrains and monopolizes interstate commerce.

3. Whether a conspiracy to acquire control over the principal companies operating taxicabs in Chicago, to induce the city to limit the number of taxicab licenses, and to acquire for themselves priority rights to any new licenses issued by the city, with the effect and purpose of excluding competitors from transportation by taxicab of interstate travelers to and from Chicago railroad stations, illegally restrains and monopolizes interstate commerce.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. [15 U. S. C. 1.]
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *. [15 U. S. C. 2.]

STATEMENT

The complaint filed in this case charges the defendants with violating Sections 1 and 2 of the Sherman Act. The charge laid against them is that they are and have been engaged in a conspiracy to restrain and monopolize (a) all interstate sales of taxicabs to the principal cab operating companies in Chicago, New York, Pittsburgh, and Minneapolis and (b) the transportation by cab of passengers and their luggage between, to, and from railroad stations in Chicago (R. 3–4, 7).

The defendants, appellees here, and the designations by which they will be referred to are:

Defendant	Designation herein
Morris Markin	Markin
Checker Cab Manufacturing Corporation	CCM
Parmelee Transportation Company	Parmelee
Cab Sales and Parts Corporation	Cab Sales
Checker Taxi Company	Checker
Chicago Yellow Cab Company, Inc	Chicago Yellow
Yellow Cab Company	Yellow

Markin is president of CCM and controls (*infra*, p. 5) the various corporate defendants. CCM manufacturers cabs at its factory in Kalamazoo, Michigan, and ships these cabs to purchasers in various states. Parmelee operates cabs in Chicago to transport passengers and their luggage between railroad stations in that city, pursuant to contracts with railroads and railroad terminal associations. It is also the sole stockholder of companies operating taxicabs in Pittsburgh, Minneapolis, and New York City. Cab Sales operates "Checker" cabs in Chicago. Checker at present has no employees and no property other than 1,000 Chicago taxicab licenses which it leases to Cab Sales. Yellow operates "Yellow" cabs in Chicago and Chicago Yellow is a holding company owning all the stock of Yellow. (R. 2–3.)

The defendants filed a motion pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for judgment dismissing the complaint for failure to state a claim on which relief might be granted

(R. 19–20).[1] The district court, after hearing argument on this motion, held that the complaint failed to state a cause of action (R. 21–27) and entered a judgment dismissing the complaint (R. 27).

Before describing the conspiracy as set forth in the complaint we call attention to the fact that throughout the conspiracy the corporate defendants have been under the control of Markin. He has been president of CCM since 1929 and he owns 47.9% of its stock, 12.2% directly and 35.7% through Cab Sales (R. 3, 5). He has managed and operated Cab Sales from the time of its organization in 1930 and has owned all of its stock since 1934 (R. 12). He has controlled Parmelee since early in 1929 (R. 9), 62% of the stock of which is owned by CCM (R. 2). Parmelee, in turn, has controlled Chicago Yellow since early 1929 through ownership of sufficient stock, 29.5%, to give Parmelee control (R. 2, 9) and Yellow is, as previously stated, a 100% subsidiary of Chicago Yellow. Markin, through Cab Sales, owned substantially all of the stock of Checker from 1932 to 1942, when Markin caused this stock to be sold to certain associates of his in his Chicago taxicab operations, these associates now holding 99% of the Checker stock (R. 3, 13).

[1] The defendants also moved in the alternative for a partial judgment dismissing portions of the complaint (R. 20).

It should also be noted that prior to the defendants' conspiracy the corporate defendants or their predecessors were independent of each other (except for Chicago Yellow's ownership of the stock of Yellow). Likewise, the present cab-operating subsidiaries of Parmelee or their predecessors were independent concerns. (R. 4–5.)

Defendants' conspiracy had its inception in January 1929 when Markin and others initiated a program to merge the more important cab companies operating in Chicago, New York, and other cities. One of the principal purposes of this program was to insure that the cab companies brought under common control would purchase all of their cabs from CCM. (R. 8.)

As a first step in the conspiracy, Parmelee was organized in April 1929. This defendant, which was financed in part by CCM, promptly acquired all of the stock of The Parmelee Company, whose business was transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations. In 1934 Parmelee dissolved this company and took over its passenger-carrying business. (R. 9.)

Parmelee, beginning early in 1929, acquired certain companies operating cabs in New York City. It later consolidated them in a wholly owned subsidiary which now holds 2,000 of the some 13,000 taxicabs licenses outstanding in New York City (R. 7). Between October 1929 and June 1930 Parmelee acquired all of the taxicab

companies operating in Pittsburgh and Parmelee now operates the cabs in Pittsburgh through two wholly owned subsidiaries of Parmelee. Early in 1931 Parmelee formed a company to operate cabs in Minneapolis. (R. 9–10.) A wholly owned subsidiary now operates 125 of the 214 cabs licensed in that city (R. 7).

In January 1929 there were 5,289 outstanding taxicab licenses in the City of Chicago, of which Yellow held 2,350, or 44%, and Checker held 1,750, or 33% (R. 4, 5). Shortly after the organization of Parmelee it acquired and has since held sufficient stock of Chicago Yellow to give Parmelee control over the policies and operations of Chicago Yellow, the 100% parent of Yellow (R. 9). In April 1929 Parmelee created a subsidiary and CCM agreed to give this subsidiary a 5% commission on cabs sold by it for CCM (R. 12). A few days after this agreement Yellow purchased 1,000 CCM cabs through Parmelee's subsidiary (*ibid.*). The commission of $95,300 which it collected on this deal was included in the price paid by Yellow for these cabs (*ibid.*).

In January 1929 Checker was a "cooperative" company the stockholders of which were various owners of "Checker" cabs (R. 5). Their agreements with Checker provided that it should hold the record title of and the city licenses for their cabs (*ibid.*). Cab Sales was incorporated in January 1930 and has at all times been managed and operated by Markin, who has owned all of its stock

since 1934 (R. 12). In February 1930 Checker, as part of a settlement of litigation between it and CCM, agreed that its drivers would purchase all of their taxicabs from Cab Sales for a period of five years at a price of $2,350 per cab (*ibid.*). At about the same time CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell its cabs to Cab Sales at $1,906 per cab (*ibid.*). During the five years of the agreement the Checker drivers purchased a large number of cabs from Cab Sales at prices about $400 above the prices at which Cab Sales purchased from CCM (*ibid.*).

In 1931 Cab Sales borrowed $500,000 from Yellow to finance the acquisition of a majority of the stock of Checker. A part of the agreement was that Cab Sales and Checker would purchase from a 100% subsidiary of Chicago Yellow all gasoline and oil used in operating "Checker" cabs. The next year a subsidiary of Yellow loaned Cab Sales an additional $200,000 to finance its purchases of Checker stock and by November 1932 Cab Sales had acquired over 97% of the stock of Checker. As owners of "Checker" cabs defaulted from time to time on their payments for cabs purchased from Cab Sales, it foreclosed on delinquent mortgage notes and took over the ownership and operation of the cabs. Since 1941 it has owned and operated all of the cabs for which Checker holds taxicab licenses. Checker leases the 1,000 licenses which it now has to Cab

Sales for $180 per year per license, which represents an annual payment of $180,000 for the licenses held by Checker (R. 3). (R. 12–13.)

In October 1929 DeLuxe Motor Cab Company had about 400 licenses and was the third largest company operating taxicabs in Chicago. Markin, who had a substantial interest in the company, offered all of its stock to Parmelee for $388,000. The company had been losing money and its net assets (aside from its licenses) were worth only about $92,000 but Parmelee considered that each of its licenses had a value of at least $1,000. Parmelee accordingly accepted Markin's offer and purchased the stock for $388,000 in February 1930. In the same year Parmelee and the president of Checker consolidated the company and certain other independent cab companies into a new company. One of the purposes of both the purchase of the DeLuxe stock and the later consolidation was to prevent an outside company from entering the field in Chicago in competition with Yellow. In 1932 Cab Sales acquired a substantial interest in the consolidated company, caused it to suspend operations, and caused its drivers to enter into contracts with Checker. CCM approved this action since it would aid in preventing interests hostile to CCM from obtaining a competitive position in Chicago. (R. 10.)

In September 1929 the city of Chicago adopted an ordinance providing that no taxicab license should thereafter be issued (other than for re-

newal of outstanding licenses) unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity require the issuance of additional licenses (R. 5).[2] Accordingly, when the defendants had, by the end of 1932, acquired control of the three largest taxicab companies operating in Chicago, the monopolization thus achieved was effectively protected against inroads. On May 18, 1934, the city adopted an ordinance regulating taxicab licensees which continued the substance of the provisions of the 1929 ordinance respecting issuance of new licenses (R. 5).

In 1929 there were outstanding 5,289 taxicab licenses in Chicago (R. 5). By 1937 the number of such licenses had fallen to 4,071, a 23% decline. Of the 1937 licenses, Yellow had 2,166, or 53%, Checker 1,500, or 37%, and others 405, or 10%. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated by it and Yellow agreed to pay Checker one-half the gross

[2] In the court below the defendants printed as an appendix to their brief the text of certain of the Chicago city ordinances referred to in the complaint. Insofar as such text serves to clarify the allegations of the complaint, reference thereto seems appropriate. It is pertinent to note that the 1929 ordinance provides that the burden of proof shall be upon an applicant for new licenses to establish "by clear, cogent, and convincing evidence" which shall satisfy the Public Vehicle License Commission "beyond a reasonable doubt," that public convenience and necessity require operation of the vehicles for which application is made.

revenue lost by Checker by reason of such reduction. Pursuant to this agreement, Checker reduced its cabs by about 336 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to 1,495. (R. 13–14.)

In the summer of 1937 Yellow and Checker, at the suggestion of Parmelee, agreed to induce the city of Chicago to reduce the total number of taxicab licenses to 3,000, of which Yellow would hold 1,500 and Checker 1,000 (R. 14). On December 22, 1937, the city of Chicago enacted an ordinance providing that if a sufficient number of taxicab licenses should be surrendered to reduce the total to 3,000 by March 31, 1938, the city would thereafter issue no additional licenses except upon transfer to permit replacement of a taxicab or in the annual renewal of an outstanding license (R. 5–6).[3] The ordinance further provided that the city might nevertheless, by general ordinance, authorize issuance of licenses in excess of 3,000 provided that those who had surrendered licenses before March 31, 1938, should have prior right to such additional licenses up

[3] This ordinance was based upon the agreement of Yellow and Checker to surrender licenses, as shown by the following preamble to the ordinance:

"Whereas, certain licensees under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000: * * *"

to the number surrendered by them (R. 6).[4] This ordinance expired by its terms on December 31, 1945, but in June 1945 it was extended for another five years (*ibid.*).

Upon the adoption of this ordinance, Yellow and Checker entered into an agreement implementing it. Their agreement recited that 511 taxicabs for which Yellow held licenses had not been operated for more than 90 days; that Checker maintained that under the terms of the ordinance of May 18, 1934, these 511 licenses were immediately subject to forfeiture;[5] and that the parties to the contract wished to have the taxicab licenses issued by Chicago reduced to 3,000 but that Checker was unwilling to surrender licenses without receiving compensation therefor. The contract provided that, in view of these consider-

[4] The ordinance provided that as between licensees having rights of priority, each would be entitled to additional licenses in the proportion which the number of licenses which he had surrendered bears to the total number of licenses surrendered (R. 6).

[5] Section 7 of the May 18, 1934, ordinance reads:

"Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee the commission may give written notice to the licensee to restore such taxicab to service and, if the same is not so restored within five days after such notice, the commission, in its discretion, may recommend to the Mayor that the license for such taxicab be revoked and the Mayor, in his discretion, may revoke same."

ations, Checker would surrender 500 licenses and would sell to Yellow its priority rights respecting reissuance of 260 of the 500 surrendered by Checker, and that Yellow would pay Checker $550 for each license surrendered by Checker, the total payment to be $320,000,[6] and would surrender a sufficient number of its own licenses to bring the total number of all city licenses down to 3,000. The contract further provided that both parties would attempt to secure for Yellow 60% and for Checker 40% of any licenses in excess of 3,000 which the city might later issue. (R. 14–15.)

The foregoing agreement was carried out and Yellow surrendered 571 licenses, which left it with 1,595, and Checker surrendered 500, which left it with 1,000 (R. 15).

With the total number of licenses issued by the city thus reduced 23% from 1937 and 43% from 1929 (*supra*, p. 10), Yellow and Checker (who held 86% of the reduced number of licenses) operated on an average during the period for which figures are stated, at least 15% fewer cabs than the number for which they held licenses. The following table shows for each company, and for the two companies combined, the number of

[6] The agreement, to which Cab Sales was a party, provided that Yellow could make the $320,000 payment in notes which Cab Sales had given for the money which it borrowed from Yellow in order to get control of Checker (R. 14; *supra*, p. 8).

licenses held, the maximum number of cabs operated, and the maximum percentage of licensed cabs which were operated during the years 1938 to 1941, inclusive (R. 15–16):[7]

	1938	1939	1940	1941
Yellow				
Licenses held	1,595	1,595	1,595	1,595
Maximum number cabs operated	1,495	1,351	1,173	1,338
Maximum % licensed cabs operated	94	85	74	84
Checker				
Licenses held	1,000	1,000	1,000	1,000
Maximum number cabs operated	---	927	920	928
Maximum % licensed cabs operated	---	93	92	93
Yellow and Checker				
Licenses held	2,595	2,595	2,595	2,595
Maximum number cabs operated	---	2,278	2,093	2,266
Maximum % licensed cabs operated	---	88	81	87

In January 1946 the Chicago Board of Aldermen passed a resolution authorizing issuance of 250 taxicab licenses to veterans and the Public Vehicle License Commissioner of Chicago issued a notice to Yellow that he would cancel 234 of its licenses because of non-operation of this number of cabs for which it held licenses and he issued a notice to Checker that he would cancel 87 of Checker's licenses for the same reason. Yellow and Checker thereupon brought suit to enjoin the city from issuing new licenses and from cancelling any of the plaintiffs' licenses. In support of their suit, the plaintiffs filed affidavits that causes be-

[7] The complaint does not show the number of cabs operated by Checker in 1938 or in the years subsequent to 1941. As to later years, the maximum number of cabs operated by Yellow was 1,450 in 1942, 1,400 in 1943, 1,200 in 1944, and 1,100 in 1945 (R. 15).

yond their control made it impossible for them to procure taxicabs to replace those which had become inoperable although in fact Yellow, Checker, and Cab Sales could have procured cabs to the full number for which they held licenses if they had been willing and free to purchase cabs manufactured by others than CCM. (R. 16.)

In February 1946 the Circuit Court of Cook County held that acceptance of the 1937 ordinance by Yellow and Checker constituted a contract between them and the city of Chicago which precluded the city from issuing licenses in excess of 3,000 without the consent of Yellow and Checker until the city had first replaced the licenses which they had surrendered in 1938 (R. 6).*

It was part of the defendants' conspiracy that they should control the purchase of taxicabs by the principal cab companies operating in Chicago, Pittsburgh, Minneapolis, and New York and that each such operating company should purchase only cabs manufactured by CCM (R. 7–8). The conspiracy has had the effect, as defendants intended, of preventing Yellow, Checker, Cab Sales, Parmelee and Parmelee's various cab operating subsidiaries from purchasing new cabs from any manufacturer other them CCM; and of requiring these defendants and cab operating subsidiaries to pay more for cabs purchased by them than

* The Supreme Court of Illinois affirmed this decision in January 1947. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652.

they would have had to pay in the absence of the conspiracy, and to increase unnecessarily their other expenditures, which has resulted in high rates being charged the public for the transportation rendered by these companies (R. 16–17).

It was a part of defendants' conspiracy that Yellow and Cab Sales should not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago, and that Parmelee should not compete with Yellow or Cab Sales in transporting passengers by cab in Chicago and its vicinity except by contract with railroads and railroad terminal associations (R. 7-8). The conspiracy has had the effect, as intended by the defendants, of eliminating and preventing competition between Yellow, Cab Sales, and Checker, on the one hand, and Parmelee, on the other hand, in the transportation of passengers and their luggage between, to, and from railroad stations in Chicago (R. 16.)

It was a part of defendants' conspiracy that they induce the city of Chicago to reduce the number of taxicab licenses to 3,000, that Yellow and Checker hold 2,595 of said 3,000 licenses, that these two defendants divide among themselves on an agreed ratio any licenses above 3,000 which the city might subsequently issue, that Yellow and Cab Sales not compete by providing more or better service to passengers, and that Yellow and

Checker prevent new operators from engaging in taxicab operations in Chicago by annually renewing licenses for cabs which they did not operate and had no intention of operating (R. 7–8). The conspiracy has had the effect, as intended by the defendants, of eliminating competition between Checker, Cab Sales and Yellow, of successfully preventing others from obtaining licenses from the city of Chicago, and of failure on the part of Yellow, Checker and Cab Sales to operate their cabs to the extent reasonably necessary to meet the public demand for cab service (R. 16–17).

The district court, in holding that the complaint failed to state a cause of action, gave the following reasons for this conclusion. It held that the complaint charged two conspiracies, one, a conspiracy to restrain the transportation by taxicab of railroad passengers between, to, and from railroad stations in Chicago and, two, a conspiracy to restrain interstate sales of taxicabs (R. 21–22). As to the first, the court held that the commerce restraint was intrastate and, in addition, that no restraint of such commerce prohibited by the Sherman Act had been set forth (R. 22–24). As to the second, the court assumed that the legality of defendants' restraint and monopolization of commerce was to be determined with reference to nation-wide sales of taxicabs and the court, having made this assumption, concluded that the commerce which had been restrained or monopolized was too unsubstantial to

come within the Sherman Act (R. 24–25). The court was also of the opinion that this restraint and monopolization was merely the product of the acquisition by CCM of exclusive sales outlets and that the Sherman Act does not prohibit a restraint or monopolization of this kind (R. 25). Finally, the court concluded that the complaint, taken as a whole, represented an attack on the validity of ordinances adopted by the city of Chicago and that the Sherman Act does not authorize such an attack (R. 25–26).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

(1) In holding that the complaint charges two conspiracies.

(2) In holding that the complaint does not set forth a conspiracy illegally to restrain and to monopolize interstate commerce in taxicabs.

(3) In holding that, upon the allegations of the complaint, the interstate commerce in taxicabs restrained or monopolized by defendants was too unsubstantial to constitute a violation of the Sherman Act.

(4) In holding that defendants' conspiracy to bring under common control the principal companies operating taxicabs in several leading cities, with the effect and purpose of excluding all manufacturers of taxicabs other than CCM from the business of selling taxicabs to such companies in

interstate commerce, did not violate Sections 1 and 2 of the Sherman Act.

(5) In holding that the transportation by cab of railroad passengers between, to, and from railroad stations in Chicago is not interstate commerce.

(6) In failing to hold that the charge in the complaint that Yellow and Checker, pursuant to defendants' conspiracy, agreed not to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago, sets forth an illegal restraint and illegal monopolization of interstate commerce.

(7) In holding that the charges made in the complaint constitute an attack upon the validity of the taxicab ordinances of the city of Chicago.

(8) In holding that the conspiracy charged in the complaint, insofar as it relates to cab operations in the city of Chicago, is beyond the reach of the Sherman Act under the holding in *Parker v. Brown*, 317 U. S. 341.

(9) In failing to hold that the allegations of the complaint showing that defendants conspired to exclude from the business of carrying passengers between, to, and from railroad stations in Chicago all persons other than the holders of outstanding taxicab licenses issued by the city of Chicago, set forth a conspiracy in illegal restraint and illegal monopolization of interstate commerce.

(10) In granting defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted.

(11) In dismissing the complaint.

SUMMARY OF ARGUMENT

I

Defendants' conspiracy to bring under their control the principal companies operating taxicabs in four leading cities and to require the controlled companies to purchase their cabs exclusively from defendant CCM excludes all other manufacturers of taxicabs from 100% of the Pittsburgh market, from 86% of the Chicago market, from 58% of the Minneapolis market and from 15% of the New York City market. Combinations to limit the outlets through which goods may be sold in interstate commerce fall within the ban of the Sherman Act. The conspiracy also restrained the trade of the controlled taxicab companies by preventing them from purchasing cabs from manufacturers other than CCM. A restraint, effected by combination, precluding the free purchase of goods in interstate commerce is as much a violation of the Sherman Act as a like restraint upon the sale of goods.

The facts alleged also show a monopolization of a "part" of interstate commerce within the meaning of Section 2 of the Act. To engross, as to any commodity, interstate trade with those

within a particular area violates both Sections 1 and 2 of the Act. It is therefore without significance that the complaint fails to show that the conspiracy gave to CCM a "monopoly" of the total United States production and sale of taxicabs. The Sherman Act does not permit a relatively small concern, any more than a large one, to fence off for itself, by means of an agreement to eliminate competition, any substantial segment of interstate commerce. Section 3 of the Clayton Act, which makes it illegal to sell goods upon the condition or agreement that the purchaser not deal in goods of a competitor, manifests the policy of Congress if this were otherwise doubtful.

The commerce in taxicabs which the conspiracy restrained and monopolized was substantial, approximating annual sales of $3,000,000. The fact that the taxicab companies and CCM were under common control is no defense. Not only was there no such identity of ownership as might make a subsidiary the mere *alter ego* of its parent but the common control, being achieved by conspiracy and a means for effectuating it, aggravates rather than mitigates the offense.

II

The defendants conspired to acquire control over substantially all taxicab companies operating in Chicago and to prevent them from competing with Parmelee for contracts with railroads pro-

viding for transportation of railroad passengers between railroad stations in Chicago, transportation which is clearly interstate. Elimination of competition by combining to bring competing carriers under common control has been held to violate the Sherman Act where the degree to which competition was eliminated and the purpose to monopolize were far less manifest than in the present case. The defendants conspired not to compete for contracts to furnish interstate transportation, but such a conspiracy violates the Act just as does a conspiracy not to compete for contracts for the sale of goods to be shipped in interstate commerce (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211).

Those engaged in general taxicab operations in Chicago are natural competitors for the business of between-station transportation of railroad passengers and the statute makes illegal combinations to prevent potential, as well as existing, competition. If *dehors* the conspiracy there are any legally relevant obstacles to such competition, this is for determination on trial of the issues and not for factual surmises based on judicial notice on a motion to dismiss the complaint.

III

The defendants conspired to acquire control over the principal taxicab companies operating in Chicago, to induce the city to limit the number of

issued taxicab licenses, and to obtain for themselves priority rights to any new licenses which the city might later issue. This is a conspiracy having the purpose and power to exclude competitors from a field of commerce, which is prohibited by Section 2 of the Sherman Act if the commerce is interstate. *American Tobacco Co.* v. *United States*, 328 U. S. 781.

The complaint does not attack the validity of the Chicago taxicab ordinances nor would the relief requested interfere in any respect with the city's regulation of taxicab licenses or licensees. The complaint merely prays that the defendants be enjoined from asserting *against* the city contract rights which the defendants acquired by illegal conspiracy. The requested relief, if granted, far from restricting the city, would enable it to take the very action which the defendants, by judicial proceedings against it, have prevented the city from taking, namely, to issue new licenses to persons other than Yellow and Checker.

A part of the business of taxicab operations from which others have been excluded consists of transporting interstate travelers between their homes, offices, or hotels and Chicago railroad stations. We submit that the interstate trip begins when the traveler takes a taxicab to reach the railroad station and that it ends when he arrives at his intended destination in home, office, or hotel

by taxicab from the railroad terminal. When the intended destination of a shipment of goods is interstate, initial or final transportation wholly within a State, by a carrier operating only therein and making a separate charge for its services, is interstate commerce. Upon the same principles, the regular, daily, known movement by taxicab, of persons embarked on interstate trips, between their homes, offices, or hotels and Chicago railroad stations is interstate commerce.

Residents of the District of Columbia who work in nearby points in Virginia are in interstate commerce when they use the bus and streetcar system of the District as one link in traveling between home and office and when the other link is buses—operated by other carriers and making a separate charge—running between the District and Virginia points. *United States* v. *Capital Transit Co.*, 325 U. S. 357. *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 21, upon which the court below relied, involved solely the question whether a tax levied by a State was an invalid encroachment upon federal commerce power. This decision is not apposite; the limits of the commerce power of Congress are not fixed at the point at which state taxing power begins. *United States* v. *South-Eastern Underwriters*, 322 U. S. 533.

ARGUMENT

We submit that the district court clearly erred in interpreting the complaint as charging two

conspiracies. The charge which is laid is that the defendants have been and now are engaged in "a combination and conspiracy to restrain and monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies" in certain cities "and in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity" (R. 7). Only one conspiracy is charged and it is not converted into two conspiracies by reason of the fact that it has more than one objective or that it embraces and operates upon more than one kind of interstate commerce. Indeed it is rare for a complaint or indictment charging a conspiracy to restrain or monopolize interstate commerce not to embrace different kinds and categories of commerce. See, for example, *Swift & Co.* v. *United States*, 196 U. S. 375, where this Court upheld the validity of a complaint charging a conspiracy to restrain and monopolize more diverse categories of interstate commerce than those embraced within the conspiracy charged in the instant case.[9]

While there is therefore but one conspiracy before the Court, the different aspects of defendants' conspiracy present different legal questions which require separate treatment and discussion.

[9] The charge in the *Swift* case is summarized at p. 394 and more fully set forth in *United States* v. *Swift & Co.*, 122 Fed. 529, 529–531 (C.C. N. D. Ill.).

I

THE DEFENDANTS BY CONSPIRING TO ACQUIRE CONTROL OVER THE PRINCIPAL COMPANIES OPERATING TAXICABS IN CERTAIN LEADING CITIES, FOR THE PURPOSE AND WITH THE EFFECT OF CAUSING THESE COMPANIES TO PURCHASE THEIR TAXICABS EXCLUSIVELY FROM A DEFENDANT MANUFACTURER, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

The commerce which is restrained and monopolized by the aspect of the conspiracy with which we are presently concerned—to acquire control over the principal taxicab companies operating in various leading cities to the end that such companies purchase solely taxicabs that CCM has manufactured—clearly is interstate. By virtue of the conspiracy, the taxicab purchases made by these operating companies are all channeled to CCM, a manufacturer located in a state (Michigan) other than the states in which the operating companies do business. Not only does the conspiracy effect a restraint and monopolization of such interstate sales and purchases but it also bars the operating companies from purchasing taxicabs from other manufacturers wherever located. The conspiracy thus directly prevents interstate sales and shipments as between each operating company and all manufacturers other than CCM outside of the state in which the company does business. Moreover, the defendants, as we understand, have never denied that the commerce restrained and monopolized by the aspect of the conspiracy now under

consideration is interstate. The district court assumed it to be interstate and impliedly so held (R. 24–25).

The question whether defendants' restraint and monopolization of this interstate commerce are within the prohibitions of the Sherman Act requires consideration of the nature of the restraint and monopolization effected by the conspiracy.

(1) The conspiracy prevented and was intended to prevent manufacturers of taxicabs other than CCM from selling their products to each of the cab companies brought under the defendants' control. These other manufacturers were thereby totally excluded from the market in the tenth largest city in the country (Pittsburgh), from 86% of the market in the second largest city (Chicago), from 58% of the market in the sixteenth largest city (Minneapolis), and from 15% of the market in the largest city (New York) (*supra*, pp. 6–7, 13). Combinations to restrain and limit the outlets through which goods may be sold in interstate commerce have been repeatedly held by this Court to fall within the ban of the Sherman Act. *Associated Press* v. *United States*, 326 U. S. 1, 18–19. This has been held, to mention only the decisions cited in the *Associated Press* case, with reference to combinations to restrain trade outlets in the sale of tiles (*Montague & Co.* v. *Lowry*, 193 U. S. 38), enameled ironware (*Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 48–49), lumber (*Eastern States Lumber Dealers' Assn.* v.

United States, 234 U. S. 600, 611), women's clothes (*Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457), and motion pictures (*United States* v. *Crescent Amusement Co.*, 323 U. S. 173).

The elimination of manufacturers of taxicabs (other than CCM) from that part of the market over which the defendants obtained control was not only effected by combination but was the direct objective of the combination. Defendants obtained their "dominating power" over the cab companies "by deliberate, calculated purchase for control." See *United States* v. *Reading Co.*, 253 U. S. 26, 57. The control which the defendants sought, obtained, and exercised, and the restraints which flowed from their combination are therefore very different from those which were under consideration in *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, where a contract between a manufacturer and a customer, neither of which controlled the other, provided that the manufacturer would make a speciality product for the customer and would not sell this product either itself or to other customers.

The engrossment by CCM of the business of selling taxicabs to the controlled operating companies and the exclusion of other manufacturers from such business, which was the purpose and effect of defendants' conspiracy, bears no analogy to an agreement between two or more taxicab companies to purchase from a particular manu-

facturer in order thereby to obtain more favorable terms than would be available if each purchased individually. In *United States* v. *Crescent Amusement Co., supra,* certain affiliated companies engaged in operating motion picture theatres had used their combined buying power to obtain advantages and concessions from distributors of motion pictures. This Court assumed (p. 183), that if a single exhibitor launched such a plan of economic warfare, he would not violate the Sherman Act. "But," said the Court, "the vice of this undertaking was the combination of several exhibitors in a plan of concerted action. * * * It will not do to analogize this to a case where purchasing power is pooled so that the buyers may obtain more favorable terms."

(2) The defendants' conspiracy also prevented the taxicab companies brought under their control from purchasing cabs from manufacturers other than CCM. By the conspiracy, these companies were denied opportunity to deal in a free market in making their purchases and were denied freedom to purchase on the basis of competitive offers. Restraint, effected by combination, precluding the free purchase of goods in interstate commerce is as much a violation of the Sherman Act as a like restraint upon freedom of sale. *Montague & Co.* v. *Lowry, supra; Binderup* v. *Pathe Exchange,* 263 U. S. 291. The restraints imposed upon the operating companies were not

merely theoretically injurious; they were actual and serious. The conspiracy was organized and dominated by Markin, president and a principal stockholder of CCM, the favored manufacturer. A primary objective of the conspiracy was to obtain the business of the controlled taxicab companies for this manufacturer. The inference is compelling that the defendants, being free to dictate the prices and terms upon which these companies bought their cabs, dictated them in favor of the company whose interests the conspiracy was designed to promote.[10] To the degree that the dictated sales prices were above those which CCM could have obtained in a competitive market, the purchasers, the controlled operating companies, were automatically injured. And if there were any lingering doubt as to whether the conspiracy had been carried out in flagrant disregard of the interests of the operating cab companies, this doubt would be removed upon consideration of the "rake-offs" received by certain companies within the controlled group on the cabs which CCM sold to cab operators. The "rake-offs" to which we refer are the excess price of about $400 per cab which drivers of "Checker" cabs were required to pay to Cab Sales (of which Markin is sole stockholder) on

[10] A motion to dismiss admits "all the facts well pleaded and all facts that can be reasonably inferred from the facts alleged." *Wootten* v. *Wootten*, 151 F. 2d 147, 150 (C. C. A. 10).

cabs purchased from CCM and the "commission" of over $95,000 which a hastily organized subsidiary of Parmelee received on 1,000 cabs which CCM sold to Yellow (*supra*, pp. 7, 8).

(3) The facts also indubitably show a violation of Section 2 of the Sherman Act. Section 2 makes it unlawful to conspire to monopolize "any part" of interstate commerce. It stands admitted that the defendants have conspired to monopolize "interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies" in Chicago, Pittsburgh, Minneapolis, and New York, and that they have conspired that each of the principal companies operating cabs in these four cities will purchase as cabs "only motor vehicles manufactured by CCM" (R. 7–8).

The prohibitions of the Sherman Act "have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce." *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 279. In the present case the defendants have conspired to the end that a single manufacturer should have a complete monopoly of all sales of taxicabs made to the principal companies operating cabs in four important cities, two of them the largest in the country. There was obviously

a violation of Section 2 if the commerce represented by all sales made to the principal purchasers in these cities constitutes a "part" of interstate commerce within the meaning of Section 2.[11] The decisions, to which we shall refer, establish that this is a part of such commerce.

We have defined the conspiracy to monopolize as it is defined in the complaint since it is the conspiracy, rather than its effectuation, which the statute makes unlawful.[12] But the violation of the statute is equally clear if tested by the acts of the defendants in effectuating the conspiracy, namely, procuring for CCM a monopoly of all sales to all taxicab companies operating in Pittsburgh, to the companies doing 86% of the business in Chicago, 58% of the business in Minneapolis, and 15% of the business in New York.

The *Indiana Farmer's Guide* case squarely held that the legality of an alleged restraint or monopolization of commerce is to be judged solely with reference to the particular commerce (both in kind and area) against which the conspiracy is directed. And in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, the interstate commerce embraced within the conspiracy was the

[11] "It is the exclusion of others from the opportunity of doing business that is regarded as monopolizing." *National Biscuit Co.* v. *Federal Trade Commission*, 299 Fed. 733, 738 (C. C. A. 2).

[12] *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, note 59 at p. 225; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 402.

interstate distribution of motion-picture films to companies operating motion-picture theatres in some 70 "small towns" located principally in Kentucky and Tennessee but also in a few places in Alabama, Arkansas, and Mississippi. This conspiracy plainly affected a much smaller proportion of the interstate distribution of motion-picture films than the proportion of interstate sales of taxicabs monopolized by the present defendants. Moreover, the Court's opinion indicates that a conspiracy much more narrowly confined in its impact upon interstate commerce would violate Sections 1 and 2 of the Sherman Act. The Court said (pp. 183–184):

> The showing of motion pictures is of course a local affair. But action by a combination of exhibitors to obtain *an* agreement with *a* distributor whereby commerce with *a competing exhibitor* is suppressed or restrained is a conspiracy in restraint of trade and a conspiracy to monopolize a part of the trade or commerce among the States, each of which is prohibited by the Sherman Act. [Italics supplied.]

It has been held that monopolization of the trade of but a single customer may violate Section 2 of the Sherman Act. *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.).

In *William Goldman Theatres, Inc.* v. *Loew's, Inc.*, 150 F. 2d 738 (C. C. A. 3), the combination

charged against the defendants and held illegal involved control of only the "first-run" motion picture theatres "in the centralized theatre district of Philadelphia." The court, citing many cases, said (p. 744):

> We know of no authority which sanctions what would otherwise be an illegal monopoly simply because it operates in a single city or a particular part of a city and affects only a part of an industry involved. There is no such limitation on the effect of the anti-trust laws.

See also *Bigelow* v. *RKO Radio Pictures*, 327 U. S. 251.

The court below held that the question whether the complaint set forth an illegal monopolization of interstate sales of taxicabs was to be determined on the basis of whether, upon the facts alleged, CCM was shown to have a "monopoly" with reference to the total number of taxicabs manufactured and sold in the United States. (R. 24–25). We submit that as the cases cited demonstrate, this holding is clearly erroneous.[13]

[13] We also submit that the court below erred in holding that the sales of taxicabs to the companies operating in Chicago were alone to be considered (R. 25). The court ignored the sales to the controlled companies operating in New York and Minneapolis upon the ground that they were not shown to have a monopoly of the taxicab business in those cities. But the monopolization of sales to these companies is in no way dependent upon whether or not they have monopolies within their own fields. As to Pittsburgh, the court said that the allegations "are too vague to deter-

In the court below the defendants contended that CCM was "merely a flea in the general automobile business" as compared with such giant companies as General Motors, Chrysler, Ford and others. There is nothing in the complaint to show the relative standing of CCM in the manufacture of taxicabs adapted for use in large cities and no facts bearing thereon of which the court might take judicial notice were called to its attention. But in any event the question of relative standing in this field of manufacture is irrelevant. The Sherman Act does not permit a small concern, any more than a large one, to expand or even to maintain its position by forming combinations to eliminate competition and to fence off for itself some substantial segment of interstate commerce. The plea that combination in restraint of trade is permissible if it is a reasonable means of protecting the weak against the strong is an ancient one, but it has not prevailed. *Eastern States Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600, 613. Congress having declared by the Sherman Act that "competition, not combination, should be the law of trade", *(Fashion Originators' Guild, Inc.* v. *Federal Trade*

mine the situation in that city." We submit that, on the contrary, the allegations could hardly be more specific, namely, that "one-half" of the cabs in Pittsburgh are operated by a wholly owned subsidiary of Parmelee and "the other half" by another wholly owned subsidiary (R. 7) and that the defendants have acquired "a complete monopoly of the business of operating cabs in Pittsburgh" (R. 9).

Commission, supra, p. 465) it is not for the courts to rule otherwise.

Furthermore, as to agreements which bind the purchaser of a product to purchase it from the seller exclusively, Congress has explicitly declared its policy. The Clayton Act, which is supplementary to the Sherman Act, provides in Section 3 that it shall be unlawful for any person engaged in interstate commerce to sell goods "on the condition, agreement or understanding" that the purchaser shall not use or deal in the goods of a competitor or competitors of the seller where the effect "may be" to substantially lessen competition or "tend to" create a monopoly "in any line of commerce." The defendants' conspiracy might well be denominated a conspiracy to violate this section. The conspiracy has at all times prevented Yellow, Checker, Cab Sales, Parmelee, and Parmelee's taxicab subsidiaries from purchasing new taxicabs from any manufacturer other than CCM and the conspiracy has excluded all other manufacturers from the opportunity to compete for this business (R. 17). Under such circumstances, the sales by CCM to the operating companies were upon the condition, agreement, or understanding that the purchasers would not buy goods from competitors of CCM.

The court below said that the sales of cabs restrained by the conspiracy are "too unsubstantial to meet the test laid down for a violation of the Sherman Act" (R. 25). We submit that this

statement is incorrect in law and in fact. In a proceeding under Section 1 of the Act "the amount of interstate or foreign trade involved is not material" since Section 1 "brands as illegal the character of the restraint not the amount of commerce affected." *United States* v. *Socony-Vacuum Oil Co., supra,* note 59 at p. 225. The considerations bearing upon a violation of Section 2 have already been discussed (*supra,* pp. 31–34), and it is now necessary only to point out that the taxicab sales which the defendants have conspired to monopolize are not in any sense unsubstantial. Yellow and Checker together hold 2,595 taxicab licenses, Parmelee's taxicab subsidiary in New York holds 2,000 licenses, its subsidiary in Minneapolis 125, and its subsidiaries in Pittsburgh all licenses issued in that city (R. 6–7). If the Pittsburgh licenses are conservatively estimated at 280, defendants monopolize and restrain purchases for replacement of 5,000 licensed taxicabs, without counting Parmelee's 85 nonlicensed cabs (R. 6). If we take $1,800 as the approximate cost of a new taxicab,[14] renewal of this taxicab fleet represents $9,000,000 in sales or $3,000,000 annually on the basis that the life expectancy of licensed taxicabs is about three years.[15]

[14] CCM's sales price in 1929 was about $1,900 (R. 12).

[15] This statement as to life expectancy was made in a resolution adopted by the Council of the city of Chicago on May 24, 1945.

We call attention to the contrasting facts as to commerce in *Montague & Co. v. Lowry*, 193 U. S. 38, where the plaintiffs, dealers in tiles in San Francisco, brought suit to recover damages for the injury resulting from the defendants' combination, which prevented or tended to prevent the plaintiffs from purchasing unset tiles. This Court affirmed a judgment for the plaintiffs which was based upon the defendants' violation of both Sections 1 and 2 of the Sherman Act.[16] The Court (p. 46) deemed it to be immaterial that the sale of unset tiles was less than 1% of the business of tile dealers in San Francisco. The small amount of commerce involved is further shown by the fact that the jury found the plaintiffs' injury to be only $500 (193 U. S. 38, 48).

The district court also said that the legality under the Sherman Act of exclusive dealing arrangements of the nature of those before the court "has long been recognized" (R. 25). The cases which the court cites for this proposition wholly fail to support it.[17] Moreover, the present conspiracy,

[16] See *Lowry* v. *Tile, Mantel and Grate Assn.*, 106 Fed. 38, 45–46 (C. C. N. D. Cal.).

[17] *United States* v. *Winslow*, 227 U. S. 202, and *United States* v. *United States Steel Corp.*, 251 U. S. 417, were merger cases. *Black & White Taxicab & Transfer Co.* v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518, involved the validity of a contract made by a railroad giving another company the exclusive right to go upon its premises and into its depot to solicit transportation of baggage and passengers. The question decided was the validity of such a contract at common law in view of a property owner's right to control entrance upon his property and in view of the ad-

to obtain control over certain taxicab companies and thus obtain a monopoly of their business for a fellow conspirator, CCM, is far removed from an ordinary exclusive agency agreement. Agents act as arms of their principal, are under duty to serve his interests, and are subject to his direction. But the taxicab companies controlled by the defendants operate their own businesses, which are in no way related to the manufacturing business of CCM. They do not sell taxicabs for CCM; the cabs which they buy are for their own use. Their ties to CCM are only those imposed by virtue and by force of defendants' conspiracy.

The court below also seemed to think that acquisition of control of the taxicab companies and use of that control to require exclusive purchases from CCM was the equivalent of "the acquisition by a manufacturing company of outlets" (R. 25). We assume that the court viewed the taxicab companies and CCM as constituting branches of a

---

vantages of the exclusive contract in promoting the convenience and safety of passengers. As to *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), we assume that the court's discussion (pp. 353–356) of whether it would require distributors of motion pictures to divest themselves of their theatre holdings was believed pertinent to the present case. As to this, it is to be observed, first, that the Paramount suit was dealing with the nation-wide business of the defendants and, second, that any conclusions reached by the trial court as to the legality under the Sherman Act of distributor ownership of theatres involved an appraisal of all the facts and circumstances shown in that case. The *Paramount* decision, it may be noted, has been appealed to this Court by all parties to the case.

single business. Not only is there not one common enterprise, as already noted, but there is lacking any such identity in ownership as would warrant treating a subsidiary as the mere *alter ego* of its parent. In the case of Yellow, for example, Parmelee owns 29.5% of the stock of Chicago Yellow (Yellow's 100% parent) and CCM owns 62% of the stock of Parmelee (R. 2), so that CCM's ownership interest in Yellow is only 18.3%. As to Cab Sales and Checker, CCM has no ownership interest whatever.[18] In any event, 100% stock ownership in a subsidiary does not negative the possibility that the parent and the subsidiary have entered into an unlawful conspiracy in restraint of trade. *United States* v. *General Motors Corporation, et al.*, 121 F. 2d 376 (C. C. A. 7), certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 710. See also *United States* v. *Pullman Co.*, 50 F. Supp. 123 (E. D. Pa.).

Finally, if the taxicab companies had, as independent operators, agreed with each other and with CCM to purchase exclusively from the latter for the purpose of excluding other manufacturers of cabs from the business of selling to the taxicab companies, this would clearly violate the Sherman Act.[19] The fact that engrossment of the business

[18] Markin owns all of the stock of Cab Sales and all of the stock of Checker, formerly owned by Markin, is now owned by associates of Markin in his Chicago taxicab ventures (*supra*, p. 5).

[19] *Montague & Co.* v. *Lowry*, *supra*; *Eastern States Lumber Dealers' Assn.* v. *United States*, *supra*; *Fashion Origi-*

by CCM was effectuated by prior purchase of stock control does not give the combination sanction. What violates the Sherman Act depends upon the actual restraint or monopolization effected, not upon the form which the transaction takes; and the tests are the same whether the restraint or monopolization results from agreement between independent units or from the integration of independent units under common ownership. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360, 376–377. Where competition is eliminated by bringing companies under common ownership, the common ownership is no defense to a charge of violating the Act; in fact, the relief requisite may consist of severance of the ties of common ownership. *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 188–190.

II

THE DEFENDANTS BY CONSPIRING TO ACQUIRE CONTROL OVER THE PRINCIPAL COMPANIES PROVIDING CAB SERVICE IN CHICAGO, FOR THE PURPOSE AND WITH THE EFFECT OF PREVENTING COMPETITION BETWEEN SUCH COMPANIES FOR THE BUSINESS OF TRANSPORTING PASSENGERS BETWEEN RAILROAD STATIONS IN CHICAGO, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

It stands presently admitted that the defendants conspired to control the principal companies

---

nators' Guild, Inc. v. *United States*, *supra*, at p. 465; *Associated Press* v. *United States*, *supra*, at pp. 18–19.

furnishing cab service in Chicago[20] and that it was a part of their conspiracy that Yellow and Checker should not compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of passengers between railroad stations in Chicago (R. 7–8). It is also admitted that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must go from one railroad station to another from two blocks to two mile distant (R. 3). Transportation by cab of such passengers is provided pursuant to contracts made with railroads and railroad terminal associations (R. 2, 4).

Under settled principles, the transportation of these passengers is interstate commerce. As early as 1870 this Court held that transportation, within the confines of a State, of goods moving from one State to a destination in another is interstate commerce. *The Daniel Ball*, 10 Wall. 557. The Court, after holding that such transportation is interstate commerce, said (p. 565):

> The fact that several different and independent agencies are employed in transporting the commodity, some acting en-

[20] The complainant identifies them as The Parmelee Company (whose business Parmelee later took over), Yellow, and Checker and DeLuxe Motor Cab Company (the business of both of which Cab Sales took over).

tirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction.

In the present case the railroads providing interstate passenger transportation contract to provide between-station transportation in Chicago. This underlines the interstate character of the transportation. That this transportation is interstate was assumed and impliedly held by the district court (R. 26–27), and the defendants have not contended otherwise.

We submit that it is equally clear that a conspiracy to eliminate all competition as to such transportation is one which is in restraint and monopolization of commerce within the meaning of the Sherman Act. The bringing under common control of competing carriers has been held to violate the Act where there was a far less complete elimination of competition and where the purpose to monopolize was far less clear than in the present case. *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *United States* v. *Southern Pacific Co.*, 259 U. S. 214.

In the court below the defendants contended that since it is not illegal for a railroad to make a contract providing that one company shall have the right and duty of transporting passengers from one Chicago railroad station to another (*Donovan* v. *Pennsylvania Co.*, 199 U. S. 279),

any restraint or monopolization of this interstate commerce set forth in the complaint is the act of the railroads and is not attributable to the defendants. We submit that this contention wholly misconceives the nature of the illegal restraint and monopolization charged against the defendants. What the complaint charges is that they conspired to eliminate competition in obtaining from railroads or railroad terminal associations contracts providing for transporting passengers between Chicago railroad stations. Such a conspiracy violates the Sherman Act, just as a conspiracy to bid collusively, i. e., on a non-competitive basis, for the procuring of contracts providing for sale of goods to be shipped in interstate commerce violates the Act. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211. The fact that the company submitting the most favorable offer might or would obtain an exclusive contract for the transportation service does not make the conspiratorial failure to compete for contracts any the less a restraint and monopolization.

The court below said: "Having in mind a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade" as to between-station transportation (R. 27). If it be a fact that Parmelee

operates cabs carrying seven to ten passengers, as defendants stated in their brief below, it does not follow that the railroads would insist upon such equipment if ordinary taxicabs would furnish the required transportation service at a lower cost to the railroads. And the fact, if it be so, that the obligations imposed by the city on licensed taxicabs would bar use of such taxicabs for between-station transportation is equally immaterial. General taxicab service and between-station service may be distinct fields of operation, but a company engaged in one field is a natural potential competitor for entrance into the other."

The charge of the complaint is that the defendant companies operating taxicabs in Chicago have, by conspiracy, agreed to refrain from competing for the business of between-station transportation of passengers pursuant to contracts with railroads. If there are obstacles *dehors* the conspiracy which would make competition for this business impractical or unlikely, this is a matter for determination on trial of the cause, not for disposition on the basis of vague surmises as to facts of doubtful legal relevance "commonly known", on a motion to dismiss the complaint for failure to state a cause of action. Any facts of this nature which might be sufficient to answer

---

[2] The Sherman Act makes no distinction "between strangling of commerce which has been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, 53.

the charge of illegal conspiracy made in the complaint must be established by proof and with precision, by the ordinary process of proof and counterproof on trial of the cause."[22]

The final statement of the district court in the present connection is that it is "unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation" (R. 27). We submit that, here again, the charge leveled against the defendants was misunderstood. Under the allegations of the complaint, the affiliation of the corporations in question was both an essential part of the conspiracy not to compete and was a means of achieving this objective. The affiliation, rather than condoning the offense, aggravates it. In *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189, this Court said:

> Dissolution of the combination will be ordered where the creation of the combination is itself the violation [citing cases]. Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the

[22] This Court has said, with reference to taking judicial notice of facts bearing upon the constitutionality of legislation, that "when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, they should be presented concretely with appropriate determinations upon evidence, so that conclusions shall not be reached without adequate factual support." *Borden's Farm Products Co., Inc.* v. *Baldwin*, 293 U. S. 194, 210.

> plea of hardship or inconvenience. That principle is adequate here to justify divestiture of all interest in some of the affiliates since their acquisition was part of the fruits of the conspiracy. But the relief need not, and under these facts should not, be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective.

In this case the appellees were charged with monopolizing commerce. To accept the view of the court below would be to hold that a monopoly once acquired is thereafter legal. The mere statement of the proposition is adequate refutation.

[redacted]

THE DEFENDANTS, BY CONSPIRING TO EXCLUDE OTHERS FROM ENGAGING IN TAXICAB TRANSPORTATION OF INTERSTATE TRAVELERS TO AND FROM CHICAGO RAILROAD STATIONS, HAVE ENGAGED IN A CONSPIRACY IN ILLEGAL RESTRAINT AND ILLEGAL MONOPOLIZATION OF INTERSTATE COMMERCE

The complaint charges that the defendants conspired to acquire control over the principal taxicab companies operating in Chicago; to induce the city of Chicago to limit the number of licensed taxicabs to 3,000; to hold 2,595, or 86% of such 3,000 licenses; to obtain for Yellow and Checker any licenses above 3,000 which the city of Chicago might subsequently issue; and to prevent new operators from entering the cab business in Chi-

cago by the annual renewal by Yellow and Checker of licenses for cabs which they did not operate and had no intention of operating (R. 7–8).

(1) If the general taxicab business in Chicago were interstate commerce, there could be no doubt that these allegations would set forth a violation of the Sherman Act. "Attainment or maintenance by the members of a conspiracy of the power to dominate and control a field of interstate commerce to such an extent that they are able, as a group, to exclude actual or potential competitors from the field, accompanied with the intention to exercise such power, is a monopolization of interstate commerce prohibited by Section 2 of the Sherman Act. *American Tobacco Co.* v. *United States,* 328 U. S. 781, 784–785, 814–815. Since the allegations referred to above show that defendants' conspiracy embraced all of these elements of illegal monopolization, the complaint necessarily charges a conspiracy to monopolize which, if the commerce to which it applies is interstate, is illegal under the Act. The fact that the complaint shows that the defendants not only conspired to obtain power to exclude competitors but also that, in carrying out their conspiracy, competitors were actually excluded (R. 16, 17) makes the violation of the statute the more glaring.[23]

[23] It is also alleged that by reason of the conspiracy Yellow, Checker, and Cab Sales have not operated their cabs to the

(2) The court below held that, irrespective of other considerations, the charge against the defendants must fail because the complaint constitutes an attack upon the validity of ordinances of the city of Chicago and, accordingly, an attack upon exercise by the city of its police power (R. 25–26). We submit that this conclusion is erroneous. The defendants acquired and maintain their monopolistic position in the Chicago taxicab field, first, by bringing under their control the three principal companies operating in this field and, second, by inducing the city of Chicago to reduce the number of taxicab licenses to 3,000 and to give to Yellow and Checker priority rights to any additional licenses which the city might later issue. The complaint does not bring into issue the validity of such action insofar as the city is concerned, and no relief which is sought would in any respect touch upon exercise by the city of the power vested in it to limit the number of issued taxicab licenses and to determine who should be the recipients of such licenses as it does issue.

The charge of the complaint merely requires that the courts take cognizance of the fact that the defendants have fortified their monopolistic position by inducing certain action by the municipality of Chicago and that the courts bar the defendants from asserting against the city con-

extent reasonably necessary to meet the public demand for cab service (R. 17).

tract rights which the defendants have acquired by virtue of their illegal conspiracy.[24] If the requested relief should be granted, the prohibitions of the decree, both in form and in substance, would run solely against the defendants. Under such decree, the city would be free to continue to issue only 3,000 licenses. If it decided to issue additional licenses the decree, far from curbing the city, would give it greater freedom of action than it now has since Yellow and Checker would not be permitted to assert against the city their priority rights to new licenses. The decree, in short, would enable the city to do precisely what it sought to do in 1946, namely, issue additional taxicab licenses to persons other than Yellow and Checker, which these defendants prevented when they obtained a judgment enjoining such action by the city (R. 16). Moreover, the city, if it should determine that Yellow and Checker, although having no enforceable priority rights as to new licenses, should nevertheless receive some or all of such additional licenses as the city might decide to issue, the decree entered in the present cause would not be a bar.

In *Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439, 460, this Court, discussing an analogous situation, said that the bill of complaint in that case would "free the rate-making function of the

[24] The prayer for relief is that the defendants be required to release and waive their priority rights to new licenses issued by the city (par. C of Prayer, R. 17).

influences of a conspiracy over which the [Interstate Commerce] Commission has no authority but which if proven to exist can only hinder the Commission in the tasks with which it is confronted." [25]

Parker v. *Brown*, 317 U. S. 341, which the district court thought to be a controlling authority, held only that the Sherman Act does not apply to a restraint of trade imposed by a State. We submit that this decision has no application here. The contract rights under the Chicago city ordinances which Yellow and Checker acquired by illegal conspiracy are not commands of the municipality; indeed, the city sought to escape its contractual obligation.[26] Nothing done by the city required appellees to engage in any of the alleged illegal activities; hence the exclusion of new licensees from taxicab operations is not a restraint imposed by the municipality but one which the defendants impose by the enforcement of illegally acquired contract rights.

[25] The dissent in that case did not, as we understand, disagree with the view of the majority that a violation of the antitrust law might be established by showing the existence of a conspiracy to subject the rate-making process to influences which exceed the limits of the collaboration authorized for the fixing of joint through rates. The dissenting opinion indicates that it would be appropriate for the United States to bring proceedings making charges such as those made in the complaint filed by the State of Georgia (324 U. S. 439, 489).

[26] The ordinance creating these rights expressly provides that they shall terminate if the grantees thereof release their rights (R. 6).

Injunction against enforcement of contracts or rights acquired by contract which operate to restrain or monopolize trade is one of the commonest forms of relief granted when violation of the Sherman Act has been found.

(3) The complaint, as we have already pointed out (*supra*, pp. 47–48), sets forth a conspiracy to exclude others from the business of transporting persons by cab in Chicago. A part of the business from which others are thus excluded consists of transporting persons making interstate trips from home, office, or hotel in Chicago to a railroad station and from a Chicago railroad station to home, office, or hotel. The complaint alleges that many persons use taxicabs to make this first lap and this last lap of their interstate trips (R. 4).

In approaching the question whether such taxicab transportation is interstate commerce it must be borne in mind that Congress, in passing the Sherman Act, intended to exercise the full measure of its constitutional power over interstate commerce.[27] The fact that such transportation as is interstate is closely intermingled with taxicab operations which are purely local does not remove the former from the reach of the commerce power,[28] and the Sherman Act applies to a re-

[27] *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293, 298; *United States* v. *South-Eastern Underwriters*, 322 U. S. 533, 558; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 495.

[28] *United States* v. *New York Central R. R. Co.*, 272 U. S. 457, 464.

straint or monopolization of the interstate aspects of a trade or business which is primarily, or even almost exclusively, intrastate.[29]

Another consideration to be borne in mind is that the transportation of interstate passengers to and from Chicago railroad stations constitutes a regular, daily, known movement of considerable magnitude.[30] The transportation is a "typical, constantly recurring course" of commerce, a "current of commerce", analogous to the current of commerce deemed to impress with an interstate character the buying and selling of livestock on a public stockyards which serves as a throat for the movement of cattle from the farms of the West for ultimate destination, in the form of meat, in eastern markets. *Swift & Co.* v. *United States,* 196 U. S. 375, 398–399. Accord, *Stafford* v. *Wallace,* 258 U. S. 495, 517–521.

When the movement of goods from one State to another involves a break or pause between shipment within a State and shipment between States, the general rule is that the goods are in interstate commerce at each stage of the movement if the parties to the shipment intended that they be carried from the starting point in one State to a point of destination in another. "When freight actually starts in the course of transpor-

[29] *Montague & Co.* v. *Lowry,* 193 U. S. 38, 46; *Greater New York Live Poultry C. of C.* v. *United States,* 47 F. 2d 156, 159 (C. C. A. 2), certiorari denied, 283 U. S. 837.

[30] A trial might establish the approximate volume of this commerce, both absolutely and relatively.

tation from one State to another it becomes a part of interstate commerce" and the interstate character which it thereby acquires "continues at least until the load reaches the point where the parties originally intended that the movement should finally end." *Illinois Central R. R. Co.* v. *Louisiana R. R. Comm.*, 236 U. S. 157, 163. The mere fact that goods received from outside a State are reshipped by the consignee, after brief interval, to another point in the State of receipt does not establish an essential continuity of movement to the latter point, but cases of this character are to be distinguished from those "where the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers." *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S. 166, 173–174. See also *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 568–569.

In the present case there is no significant pause or break between the taxicab trip to or from a Chicago railroad station and the railroad trip from or to the station.[30a] The journey is thus a continuous one by taxicab and railroad, and generally the traveler's intended destination from the beginning of his trip is, not the railroad sta-

[30a] The "ability of the traveler to obtain conveniently * * * a taxicab to convey him and his hand-baggage to his ultimate destination, is an essential of adequate rail transportation." Brandeis, J., concurring in *Delaware L. & W. R. R.* v. *Morristown*, 276 U. S. 182, 198.

tion, but the home, office, or hotel which he wishes to reach—just as they are the actual starting point of interstate trips. The fact that the traveler goes to or from the station by taxicab, thus selecting a direct and quick medium of transportation, serves to make the taking of the cab or the leaving of it the true starting point or ending point of the interstate journey. It is immaterial that in individual instances the facts might negative this conclusion. We are here concerned with exclusion from a business which comprises taxicab transportation of interstate travelers to and from Chicago railroad stations; a conspiracy to exclude competitors from rendering this transportation service is a restraint and monopolization of interstate commerce if the transportation is, in its generality, interstate.

The fact that the traveler pays two fares, one to the taxicab operator and one to the railroad, is by no means decisive that the interstate trip begins and ends in the railroad station. When the actual destination of goods is in another State or a foreign country they are in interstate commerce during an initial movement wholly within a State although this initial movement and the subsequent movement beyond the State are made under separate bills of lading.[31] The interstate character of the transportation is not destroyed by reason of

[31] *Louisiana R. R. Commission* v. *Texas & Pacific Ry. Co.*, 229 U. S. 336, 341; *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S. 166, 170.

the fact that during the initial movement within one State the shipper has power to divert the goods from the intended interstate destination [32] or by reason of the fact that such initial movement is by one carrier and the movement beyond it by another.[33] Furthermore, the considerations which determine when interstate commerce ends are the same as those which determine when it begins.[34]

United States v. *Capital Transit Co.*, 325 U. S. 357, would seem to be decisive that taxicab transportation of interstate travelers to and from Chicago railroad stations is interstate commerce. The Capital Transit and three other companies operated buses between the District of Columbia and nearby points in Virginia where there were Government offices employing many District residents. Capital Transit also operated streetcars and buses within the District and accorded to passengers on its system the privilege of transfer to and from some of its Virginia buses. The case presented the question of the validity of an order of the Interstate Commerce Commission which required Capital Transit to establish joint through fares with the three other companies running buses between the District and points in Virginia covering transportation on the Capital Transit's

[32] *Champlain Co.* v. *Town of Brattleboro*, 260 U. S. 366, 376; *Hughes Bros. Co.* v. *Minnesota*, 272 U. S. 469, 476.

[33] *The Daniel Ball*, *supra*; *Hughes Bros. Co.* v. *Minnesota*, *supra*.

[34] *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, *supra*.

streetcars and buses in the District and bus transportation between the District and Virginia. The statute authorized the Commission to prescribe through rates for interstate transportation involving two or more motor carriers but not for such transportation involving a motor carrier and some other type of carrier. The Commission concluded that since Capital Transit and the other three companies were motor carriers and since Capital Transit was using streetcars and buses as an integrated unit in carrying out interstate transportation, the Commission had authority to prescribe through rates for all segments of Capital Transit's interstate transportation.

This Court held that the Commission's order was within its authority. The interstate nature of the transportation within the District of those whose place of employment was in Virginia and who traveled to and from the District over the lines of other, wholly independent carriers was an essential element of the Court's holding. As to the interstate nature of such transportation, the Court said (p. 363):

> Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia-going bus at their place of work.

> On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District termini of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate.

General transportation by streetcars and buses within the District of Columbia is just as much local as is general transportation by taxicab in Chicago. If the former transportation is interstate as to those using this system of transportation as the first or last lap in interstate trips, involving as to the actual interstate movement another carrier and a separate fare, so is the transportation by taxicab of interstate travelers to and from Chicago railroad stations. Of the two, the latter would seem the more clearly interstate commerce since the taxicab is engaged by the traveler himself as a means of beginning or ending his interstate trip whereas interstate passengers on Capital Transit's streetcars and buses form merely a part of the general body of passengers which they carry.

The Fair Labor Standards Act applies to employees "engaged in [interstate] commerce." In

a case brought to determine whether porters at a railroad terminal station were being paid the minimum wages specified by that Act, the defendant terminal company stipulated that the porters were engaged in interstate commerce. *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386, 391.[35] If those who assist passengers by carrying their bags between trains and station exists and who are thus links between the transportation media by which passengers arrive at or leave a railroad station and the railroad cars which bring them into or take them from the station are in interstate commerce, transportation by taxicab to or from the station would also seem to be interstate commerce.

In *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 53 (C. C. A. 4), certiorari denied, 321 U. S. 795, one of the grounds upon which the court held that the National Labor Relations Act applies to a company operating streetcars and buses in Baltimore and not crossing any state line was that the cars and buses "carry

[35] In *Joseph* v. *Carter & Weekes Stevedoring Co.*, Nos. 29 and 30, this Term, decided March 10, 1947, it was held that a business which consisted "only of taking freight from a convenient place on the pier or lighter wholly within the territorial limits of New York City and storing it properly for safety and for handling in or on the outgoing [in commerce] vessels alongside, or similarly unloading a vessel on its arrival" was "essentially a part of the commerce itself."

persons traveling in interstate commerce to and from the stations and wharves of interstate carriers."[36]

In the present case the court below was of the opinion that *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 21, established that taxicab transportation of interstate travelers to and from Chicago railroad stations is not interstate commerce. That case held that the Commerce Clause did not bar the State of New York from imposing a franchise tax on the business of operating cabs for carrying persons to and from the New York terminus of a ferry line between New York and New Jersey. The carriage by cab was wholly within New York and the charge for this service was separate from the charge made for further transportation.

We are not here concerned with the holding as to the taxing power of a State; it has been repeatedly pointed out that it "does not follow that because a thing is subject to state taxation it is also immune from federal regulation under the Commerce Clause" (*Binderup* v. *Pathe Exchange*, 263 U. S. 291, 311).[37] But the view expressed in

[36] See also *Kach* v. *Monessen Southwestern Ry. Co.*, 151 F. 2d 400 (C. C. A. 3); *Dallum* v. *Farmers' Co-op. Trucking Assn.*, 46 F. Supp. 785 (D. Minn.); *In the Matter of Spokane United Railways*, 60 N. L. R. B. 14, 15–16.

[37] In cases involving state tax or regulatory powers the question "is not with respect to the extent of the power of

the *Knight* case (p. 28) that the cab service was "an independent local service, preliminary or subsequent to any interstate transportation" cannot, we submit, be reconciled with later decisions of this Court. In *Stafford* v. *Wallace*, 258 U. S. 495, 528, the Court said that the *Knight* case does not mean that federal commerce power does not extend to transportation by cab when and if this is used in a conspiracy "to monopolize interstate passenger traffic." And in *United States* v. *South-Eastern Underwriters*, 322 U. S. 533, 544–553, this Court considered and rejected the argument that the business of insurance was not Interstate Commerce within the purview of the Sherman Act because of the many decisions sustaining the power of the states to regulate and tax that business.

CONCLUSION

For the reasons stated, the judgment of the district court should be reversed, with directions to deny the defendants' motion to dismiss the complaint and their alternative motion for a

---

Congress to regulate interstate commerce, but whether a particular exercise of state power, in view of its nature and operation must be deemed to be in conflict with this paramount authority." *Bacon* v. *Illinois*, 227 U. S. 504, 516. See also *Stafford* v. *Wallace*, *supra*, p. 526; *Minnesota* v. *Blasius*, 290 U. S. 1, 8; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37.

partial judgment dismissing portions of the complaint.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
CHARLES H. WESTON,
HERBERT BORKLAND,
PHILIP MARCUS,
Special Assistants to the Attorney General.

APRIL 1947.

U. S. GOVERNMENT PRINTING OFFICE 1947